

# Notice of Allowability

Application No.

10/820,610

Examiner

Ashwin Mehta

Applicant(s)

GARDNER ET AL.

Art Unit

1638

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 06 February 2007 and 31 July 2007.
2. ☒ The allowed claim(s) is/are 1-15 and 17-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 02062007
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

***Status of Objections and Rejections***

1. The amendments filed February 6, 2007 have been entered.
2. The amendment to the priority statement on page 1 of the specification is acknowledged.
3. The warning that claims 5 and 6 would be objected to as being duplicates of claims 2 and 3 is withdrawn, upon further consideration.
4. The rejections of claims 1-6 and 19-29 on the ground of nonstatutory obviousness-type double patenting are obviated by the submission of the terminal disclaimer to U.S. Patent No. 6,809,240, which is approved.
5. The rejections of claims 2, 3, 20, 22, and 28-30 under 35 U.S.C. 112, second paragraph are withdrawn, in light of the claim amendments filed February 6, 2007 and below.
6. The rejections of claim 16 under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 102/103 are moot, in light of its cancellation.
7. The rejection of claims 7-10 19-22, 25, and 30 under 35 U.S.C. 112, first paragraph, lack of sufficient written description, are withdrawn due to the amendments of claims 19-21 and upon further consideration. Regarding claims 7-10, F1 seed having PH6JM as its maternal parent, has maternal cells in its aleurone layer.

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8. The rejection of claims 7-10 under 35 U.S.C. 112, 1<sup>st</sup> paragraph, for lacking enablement, is withdrawn upon further consideration.

9. The response to the request for information under 37 CFR 1.105 is acknowledged. The information provided therein indicates that maize inbred line PH6JM and F1 hybrid progeny thereof were not taught or suggested in the prior art.

*Examiner's Amendment*

10. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Hodgson on July 31, 2007.

The claims have been amended as follows:

In claim 2, the recitation, "an F1 hybrid" in line 1 was replaced with --the--.

In claim 22, line 3, the recitation "yield enhancement;" was deleted, and in line 4, the recitation "improved nutritional quality;" was deleted.

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28. A method for developing a second maize plant in a maize plant breeding program comprising applying [using] plant breeding techniques to a first maize plant, or parts thereof, wherein said first maize plant is [employing a maize plant, or its parts, as a source of plant breeding material comprising using] the maize plant of claim 11, and wherein application of said techniques results in development of said second maize plant [or parts thereof, as a source of said breeding material].

In claim 30, part (d), the recitation, "retain the" was replaced with --possess said--.

11. Claims 1-15 and 17-30 are allowed.

#### ***Contact Information***

Any inquiry concerning this or earlier communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at 571-272-0975. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as

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general patent information available to the public. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

July 31, 2007

A handwritten signature in black ink, appearing to read 'Ashwin D. Mehta', written over a horizontal line.

Ashwin D. Mehta, Ph.D.  
Primary Examiner  
Art Unit 1638